A **LEMBAGA KUMPULAN WANG SIMPANAN PEKERJA**

v.

ONG LIAN CHEE

B FEDERAL COURT, PUTRAJAYA
RICHARD MALANJUM CJ (SABAH & SARAWAK)
RAUS SHARIF FCJ
ABDULL HAMID EMBONG FCJ
[CIVIL APPEAL NO: 02-4-2010 (W)]
C 27 JANUARY 2011

CIVIL PROCEDURE: *Appeal - Appeal to Federal Court - Withdrawal from provident fund - Section 54(1)(a) read with s. 58(1) and the Fifth Schedule to the Employees Provident Fund Act 1991 -*
D *Interpretation of - Payment of additional amount under s. 58(1) Employees Provident Fund Act 1991 - Whether may only arise where authority for withdrawal granted - Whether a subsidy and not deceased's contributions - Whether a matter of policy consideration by legislature on quantum of additional amount to be paid - Whether amount reduced to*
E *RM2,000 through amendment of Fifth Schedule*

LABOUR LAW: *Provident fund - Withdrawal of - Section 54(1)(a) read with s. 58(1) and the Fifth Schedule to the Employees Provident Fund Act 1991 - Interpretation of - Payment of additional amount under*
F *s. 58(1) Employees Provident Fund Act 1991 - Whether may only arise where authority for withdrawal granted - Whether a subsidy and not deceased's contributions - Whether a matter of policy consideration by legislature on quantum of additional amount to be paid - Whether amount reduced to RM2,000 through amendment of Fifth Schedule*

G This was an appeal by the Employees Provident Fund Board ('the appellant') against the decision of the Court of Appeal upholding the decision of the High Court in allowing the respondent's originating summons. The deceased, a member of the Employee Provident Fund ('EPF') died on 12 October 1998 and his wife
H ('the respondent') was granted letters of administration to the estate of the deceased. In August 2001, the respondent applied for the withdrawal of all sums of money standing to the credit of the deceased with EPF under s. 54(1)(a) of the Employees Provident Fund Act 1991 ('the Act'). Upon the withdrawal under
I s. 54(1)(a) of the Act, an additional amount of RM2,000 was paid to the respondent pursuant to s. 58(1) of the Act, read together with the Fifth Schedule. The respondent challenged the validity of

the appellant's decision to pay her the additional amount of RM2,000 and claimed that the additional amount payable ought to have been RM30,000. The High Court allowed the respondent's originating summons. Aggrieved, the appellant filed its appeal to the Court of Appeal. The Court of Appeal dismissed the appellant's appeal and held, *inter alia*, the event that gave rise to the withdrawal of the deceased member's money pursuant to s. 54(1)(a) read together with s. 58(1) and the Fifth Schedule was death of the member, hence the additional amount payable to the respondent should be based on the date of the member's death. Leave to appeal against the decision of the Court of Appeal was granted to the appellant on, *inter alia*, the following question (i) whether the correct interpretation of s. 54(1)(a) and 58(1) of the Employees Provident Fund Act 1991 ('the EPF Act 1991') and the Fifth Schedule of the EPF Act 1991, all of which as amended by Act A 1080/2000 and which came into force on 1 July 2000, was that the additional amount as set out in the Fifth Schedule that was payable was the amount stipulated therein as the date of granting of authority for withdrawal under s. 54(1)(a) rather than the date of death of the deceased member.

Held (allowing the appeal)
Per Raus Sharif FCJ delivering the judgment of the court:

(1) The words and phrases that called for determination herein were in relation to s. 54(1)(a) and s. 58(1) of the Fifth Schedule of the Act. The events which entitled the respondent payment of the additional amount under s. 58(1) of the Act was not the death of the deceased member *per se*, but the approval or exercise of discretion by the appellant to grant the authority for withdrawal under s. 54(1)(a). Thus, the courts below had erred in law. (para 18)

(2) Section 58(1) clearly provides that the payment of the additional amount as provided by the Fifth Schedule, may only arise where the authority for withdrawal under s. 54(1)(a) has been granted. In the present case, the authority for withdrawal under s. 54(1) was granted by the appellant on 27 September 2001 and 9 July 2002. At that material time, the Fifth Schedule provides that the additional amount payable under s. 58(1) was RM2,000 and not RM30,000. There is no mention in s. 58(1) that the additional amount is payable upon the death of a member. (para 19)

(3) The additional amount as set out in the Fifth Schedule was not the deceased's contributions to the fund at all. It was not the deceased's money at the time of his death. It was more a subsidy. The object and purpose was to alleviate hardship faced by the deceased's dependants which ensued after the demise. Thus, the additional amount payable under s. 58(1) being a subsidy, was a matter of policy consideration by the legislature on the quantum of the additional amount to be paid. (paras 20 & 21)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah rayuan oleh Lembaga Kumpulan Wang Simpanan Pekerja ('perayu') terhadap keputusan Mahkamah Rayuan mempertahankan keputusan Mahkamah Tinggi dalam membenarkan saman pemula responden. Simati, seorang ahli Kumpulan Wang Simpanan Pekerja ('KWSP'), meninggal dunia pada 12 Oktober 1998 dan isterinya ('responden') diberikan surat kuasa mentadbir estet si mati. Pada Ogos 2001, responden telah memohon mengeluarkan semua wang yang ada pada kredit simati dengan KWSP di bawah s. 54(1)(a) Akta Kumpulan Wang Simpanan Pekerja 1991 ('Akta'). Atas pengeluaran di bawah s. 54(1)(a) Akta, amaun tambahan RM2,000 telah dibayar kepada responden di bawah s. 58(1) Akta, dibaca bersama dengan Jadual Kelima. Responden mencabar kesahihan keputusan perayu untuk membayarnya amaun tambahan RM2,000 dan mendakwa bahawa amaun tambahan yang perlu dibayar sepatutnya RM30,000. Mahkamah Tinggi membenarkan saman pemula responden. Terkilan, perayu memfailkan rayuan kepada Mahkamah Rayuan. Mahkamah Rayuan menolak rayuan perayu dan memutuskan, antara lain, bahawa peristiwa yang menimbulkan pengeluaran wang ahli simati di bawah s. 54(1)(a) dibaca bersama dengan s. 58(1) dan Jadual Kelima adalah kematian seorang ahli, oleh itu amaun tambahan yang sepatutnya dibayar kepada responden harus berdasarkan tarikh kematian ahli. Kebenaran untuk merayu terhadap keputusan Mahkamah Rayuan dibenarkan kepada perayu atas, antara lain, persoalan berikut (i) sama ada tafsiran yang betul ss. 54(1)(a) dan 58(1) Akta Kumpulan Wang Simpanan Pekerja 1991 ('Akta KWSP 1991') dan Jadual Kelima Akta KWSP 1991, yang telah dipinda oleh Akta A 1080/2000 dan yang berkuatkuasa pada 1 Julai 2000, amaun tambahan seperti yang dinyatakan di dalam Jadual Kelima yang sepatutnya dibayar adalah amaun yang ditetapkan sebagai tarikh pemberian kuasa untuk pengeluaran di bawah s. 54(1)(a) dan bukannya tarikh kematian ahli simati.

Diputuskan (membenarkan rayuan)
Oleh Raus Sharif HMP menyampaikan penghakiman mahkamah:

(1) Perkataan dan frasa yang memerlukan penentuan di sini berhubungan dengan s. 54(1)(a) dan s. 58(1) Jadual Kelima Akta. Peristiwa-peristiwa yang membawa kepada hak responden mendapatkan bayaran amaun tambahan di bawah s. 58(1) Akta bukan kematian simati, tetapi kelulusan dan perlaksanaan budibicara perayu untuk memberikan kuasa untuk pengeluaran di bawah s. 54(1)(a). Oleh itu, mahkamah-mahkamah di bawah telah khilaf dari segi undang-undang.

(2) Seksyen 58(1) dengan jelas memperuntukkan bayaran amaun tambahan seperti yang diperuntukkan oleh Jadual Kelima, hanya boleh timbul di mana kuasa untuk pengeluaran di bawah s. 54(1) telah diberikan. Di dalam kes ini, kuasa pengeluaran di bawah s. 54(1) telah diberikan oleh perayu pada 27 September 2001 dan 9 Julai 2002. Pada masa material itu, Jadual Kelima memperuntukkan bahawa jadual tambahan yang perlu dibayar di bawah s. 58(1) adalah RM2,000 dan bukan RM30,000. Tiada sebutan di dalam s. 58(1) bahawa amaun tambahan perlu dibayar apabila berlaku kematian seseorang ahli.

(3) Amaun tambahan yang ditetapkan di dalam Jadual Kelima bukan sumbangan simati kepada dana. Ia bukan wang simati pada masa beliau meninggal dunia. Ia adalah lebih kepada subsidi. Objek dan tujuan adalah untuk mengurangkan kesukaran yang dihadapi oleh tanggungan-tanggungan simati yang berlaku selepas kematian. Oleh itu, amaun tambahan yang perlu dibayar di bawah s. 58(1), sebagai satu subsidi, adalah perkara pertimbangan polisi oleh badan perundangan mengenai jumlah amaun tambahan yang perlu dibayar.

Case(s) referred to:
Chin Choy & Ors v. Collector of Stamp Duties [1978] 1 LNS 26 FC ***(refd)***
Chin Choy & Ors v. The Collector of Stamp Duties [1981] CLJ 37; [1981] CLJ (Rep) 1 PC ***(refd)***
Dato' Ismail Kamus v. Pegawai Pengurus Pilihanraya (Zainal Abidin Azim) & Ors [2005] 2 CLJ 237 FC ***(refd)***
National Union of Hotel, Bar & Restaurant Workers v. Casuarina Beach Hotel Sdn Bhd [1986] 1 CLJ 474; [1986] CLJ (Rep) 193 FC ***(refd)***

Legislation referred to:
Employees Provident Fund Act 1991, ss. 54(1)(a), 58(1), Fifth Sch
Limitation Act 1953, s. 6(1)(d)

For the appellant - Wong Chong Wah (Harold Tan Kok Leng with him); M/s Skrine & Co
For the respondent - K Sugunan; M/s Gomez & Assocs

[Appeal from Court of Appeal; Civil Appeal No: W-02-889-2006]

Reported by Suhainah Wahiduddin

JUDGMENT

Raus Sharif FCJ:

[1] This is an appeal filed by the Employees Provident Fund Board ("the appellant") against the decision of the Court of Appeal given on 2 December 2009 which upheld the decision of the High Court in allowing the respondent's Originating Summons dated 26 October 2005.

Background Facts

[2] Goh Tin Poh ("the deceased"), a member of the Employees Provident Fund ("EPF") died on 12 October 1998. Letters of administration to the estate of the deceased was granted to his wife, the respondent herein.

[3] In August 2001, the respondent applied for the withdrawal of all sums of money standing to the credit of the deceased with EPF under s. 54(1)(a) of the Employees Provident Fund Act 1991 ("the Act"). The appellant approved the application for the withdrawal on 29 September 2001 and 9 July 2002 for the sums of RM29,999 and RM135,000 respectively. The said sums were paid to the respondent on 2 October 2001 and 15 July 2002 respectively.

[4] Upon the withdrawal under s. 54(1)(a) of the Act, an additional amount of RM2,000 was paid to the respondent by the appellant pursuant to s. 58(1) of the Act, read together with the Fifth Schedule.

[5] By an Originating Summons dated 26 October 2005 ("the Originating Summons"), the respondent sought to challenge the validity of the appellant's decision to pay her the additional amount of RM2,000 and claimed that the additional amount payable ought to have been RM30,000.

[6] On 16 August 2006, the High Court allowed the respondent's Originating Summons with costs and ordered the appellant to pay the respondent the additional amount of RM30,000. The High Court held that the right to withdrawal under s. 54(1)(a) and the payment of the additional amount under s. 58(1) accrued upon the member's death.

[7] Aggrieved, the appellant filed its appeal to the Court of Appeal. At the Court of Appeal the issues argued were:

(i) Given the date of the deceased member's death on 12 October 1998, and upon the true construction of s. 54(1)(a) read with s. 58(1) and the Fifth Schedule, whether the additional payment payable to the respondent should be RM30,000; and

(ii) Whether respondent's claim was barred by s. 6(1)(d) of the Limitation Act 1953 on the ground that the Originating Summons was filed on 26 October 2005 seven years after the deceased's death.

[8] The Court of Appeal held *inter alia*:

(i) The event that gave rise to the withdrawal of the deceased member's money pursuant to s. 54(1)(a) read together with s. 58(1) and the Fifth Schedule is death of the member. Hence, the additional amount payable to the respondent should be based on the date of the member's death and not the subsequent date of approval by the appellant; and

(ii) As regards to the limitation argument, the Court of Appeal held that the six years limitation period would not begin to run from the date of death of the deceased member, but from the date when the appellant rejected the respondent's claim for RM30,000 and merely approved the payment of RM2,000 as the additional amount payable to the respondent on 27 September 2001 and 9 July 2002.

Questions Of Law

[9] Dissatisfied with the decision of the Court of Appeal, the appellant then applied for leave to appeal to this Court. On 9 March 2010, leave to appeal was granted to the appellant on the following questions:

(i) Whether the correct interpretation of section 54(1)(a) and 58(1) of the Employee Provident Fund Act 1991 ("the EPF Act 1991") and the Fifth Schedule of the EPF Act 1991, all of which as amended by Act A 1080/2000 and which came into force on 1 July 2000, is that the additional amount as set out in the Fifth Schedule that is payable is the amount stipulated therein as the date of granting of authority for withdrawal under section 54(1)(a) rather than the date of death of the deceased member; and

(ii) Further or alternatively, if the right or entitlement to the additional amount as set out in the Fifth Schedule to the EPF Act 1991 was vested in the deceased's estate, or in the respondent as a defendant of the deceased at the time of death as contended for by the respondent, whether a failure to institute an action to recover for the same within 6 years thereafter would result in limitation setting in by virtue of section 6(1)(d) of the Limitation Act 1953.

Findings

Question (i)

[10] At the outset, it must be stated that the additional amount paid to the respondent under s. 58(1) was not part of the deceased's contributions to the EPF. The deceased's contributions were dealt with under s. 54(1)(a) which provides as follows:

> 54(1) The Board may authorise the withdrawal of all sums of the Fund upon any terms and conditions as may be prescribed by the Board if the Board is satisfied that:
>
> (a) The member of the Fund has died; …

[11] It is not in dispute that the sums of money standing to the credit of the deceased member had been paid to the respondent. What is in dispute is the additional amount payable to the respondent under s. 58(1) which provides as follows:

> 58(1) Where authority for withdrawal under s. 54(1)(a) has been granted, an additional amount as set out in the Fifth Schedule shall be payable:

Provided that the Board is satisfied that a member of the Fund has died, and no authority for withdrawal under s 54(1)(a) has been granted, the Board may as it deem fit, pay the additional amount to such person as the Board may approve.

[12] The formula to amount payable is provided by the Fifth Schedule which reads as follows:

FIFTH SCHEDULE
(Section 58(1))

ADDITIONAL AMOUNT PAYABLE UPON DEATH

(1) The formula for the calculation of an additional amount on the death of a member of the Fund who dies before the age of sixty years shall be as follows:

Member's credit at time of death	X	(60 - age of death) 2 + [3 (age at death - age on first becoming a Member)]:

Provided however in the event that the additional amount calculated in accordance with the formula exceeds thirty thousand ringgit the additional amount payable shall be thirty thousand ringgit and in the event that the additional amount calculated in accordance to the formula is less than one thousand ringgit the additional amount payable shall be one thousand ringgit …

[13] It is clear from the Fifth Schedule that the maximum additional amount payable under the formula shall be RM30,000. However, by virtue of the amendment to the Fifth Schedule (Act A 1080/2000) on 1 July 2000 which came into force on the same date (PU (B) 237/2000) the amount was reduced to RM2,000. The amendment reads:

Additional Amount Payable Where Withdrawal Is Made Under Section 54(1)(a)

The additional amount payable is two thousand ringgit …

[14] Before the High Court and the Court to Appeal respectively, the parties agreed that the real issue was whether the additional amount payable to the respondent was RM30,000 or RM2,000. Before us, learned counsel for the appellant submitted that the event which entitles the respondent to payment of the additional amount under s. 58(1) of the Act is not the death of the

deceased member *per se*, but the approval or exercise of discretion to grant the authority for withdrawal under s. 54(1)(a). It was further submitted that the death of the deceased member was never an event expressly or impliedly, that *ipso facto* triggered the liability on the appellant to pay the additional amount as set out in the Fifth Schedule.

[15] Learned counsel for the respondent maintained his submission before the High Court as well as the Court of Appeal that the additional amount payable to the respondent accrued to her at the time of the deceased death. Thus, he submitted that additional amount payable ought to be RM30,000 and not RM2,000.

[16] It is trite law that the courts must give effect to the plain and unambiguous meaning of statutory provisions. The principle in the interpretation of statues, had been well laid down by Chang Min Tat FC (as he then was) in Federal Court judgment in *Chin Choy & Ors v. Collector of Stamp Duties* [1978] 1 LNS 26 where he stated:

> it may be opposite at this stage to recall certain basic principles in the interpretation of statutes. Applying the words and phrases of a statute in their ordinary meaning has been said to be the first and most elementary rule of construction and the second is said to be to construe the phrases and sentences according to the rules of grammar.

[17] The Federal Court judgment was affirmed by the Privy Council in *Chin Choy & Ors v. The Collector of Stamp Duties* [1981] CLJ 37; [1981] CLJ (Rep) 1. Subsequently the Federal Court in *National Union of Hotel, Bar & Restaurant Workers v. Casuarina Beach Hotel Sdn Bhd* [1986] 1 CLJ 474; [1986] CLJ (Rep) 193 and in *Dato' Ismail Kamus v. Pegawai Pengurus Pilihanraya (Zainal Abidin Azim) & Ors* [2005] 2 CLJ 237, had adopted the same approach. We have no reasons to depart from the above established principle.

[18] In the present case, the words and phrases that called for determination are in relation to s. 54(1)(a) and s. 58(1) of the Fifth Schedule of the Act. Having read and re-read the sections, we are in agreement with the learned counsel for the appellant that both the Courts below had erred in law in deciding the way they did. We are of the view that the events which entitles the respondent

payment of the additional amount under s. 58(1) of the Act is not the death of the deceased member *per se*, but the approval or exercise of discretion by the appellant to grant the authority for withdrawal under s. 54(1)(a).

[19] Section 58(1) clearly provides that the payment of the additional amount as provided by the Fifth Schedule, may only arise where the authority for withdrawal under s. 54(1)(a) has been granted. In the present case, the authority for withdrawal under s. 54(1) was granted by the appellant on 27 September 2001 and 9 July 2002. At that material time, the Fifth Schedule provides that the additional amount payable under s. 58(1) is RM2,000 and not RM30,000. There is no mention in s. 58(1) that the additional amount is payable upon the death of a member.

[20] As stated earlier, the additional amount as set out in the Fifth Schedule is not the deceased's contributions to the fund at all. It is not the deceased money at the time of his death. It is more of a subsidy. The object and purpose must be to alleviate hardship faced by the deceased's dependants which ensued after the demise. Thus, the additional amount payable under s. 58(1) being a subsidy, it is a matter of policy consideration by the legislature on the quantum of the additional amount to be paid. Before 1 July 2000, the maximum additional amount that may be paid was RM30,000. However, on 1 July 2000, the amount was reduced to RM2,000 through amendment of the Fifth Schedule. The rationale of reducing the additional amount payable was explained by the Deputy Minister of Finance in the course of the debate to the amendment of the Fifth Schedule in the following words:

> Beberapa Yang Berhormat juga menyentuh bahawa amaun tambahan yang diberi kepada seseorang ahli kerana kematian ataupun hilang keupayaan pekerja iaitu RM2,000.00 sahaja. Ini merupakan satu amaun yang kecil. Untuk makluman Dewan yang mulia ini, rasional penetapan amaun tambahan sebanyak RM2,000.00 ini adalah seperti berikut:
>
> Satu, memandangkan bahawa amaun tambahan ini dibayar melalui hasil ataupun pendapatan KWSP, ini bererti ahli-ahli KWSP yang lain yang tidak terlibat terpaksa menanggung bayaran ini secara bersama. Purata bayaran bantuan yang ditanggung oleh seseorang ahli untuk bantuan kematian dan hilang upaya telah meningkat dengan begitu ketara dari tahun ke setahun. Implikasinya

A pendapatan dan keuntungan KWSP yang sepatutnya boleh diberikan dalam bentuk dividen kepada ahli terpaksa dikurang untuk digunakan bagi pembayaran amaun tambahan sebagai dana.

Dalam tahun 1997 sahaja kalau kita gabungkan kedua-dua pembayaran, bayaran tambahan dalam kes kematian dan juga kes
B hilang keupayaan pekerja. Kalau kita gabungkan kedua-dua skim bantuan kematian ini, jumlah bayaran yang terlibat pada tahun 1997 ialah RM102.2 juta. Ini memang merupakan satu jumlah yang besar. Dan, kalau kita ikut cara sekarang ini, ia memang meningkat dengan begitu ketara sekali, maka kita anggap bahawa
C bila seseorang meninggal dunia ataupun hilang keupayaan maka dia boleh mengeluarkan sekali gus semua amaun yang dicarumkan dan di atas ini kita akan memberikan RM2,000.00 ini. Ini adalah dianggap bersesuaian.

[21] The above statement clearly explains the rationale on the
D payment of the additional amount under s. 58(1) of the EPF Act 1991. And it is only to be granted "where the authority for withdrawal under para. 54(1)(a) has been granted …". The words are plain and unambiguous. Nowhere does it provide that the right to receive the additional amount, accrued upon the death of the
E deceased member.

[22] In light of the above, we would answer the first question in the positive.

F *Question (ii)*

[23] As the answer to the first question is in the positive, we find no necessity to deal with the second question posed to us.

Conclusion

G **[24]** Accordingly, we allow the appeal. The orders of the courts below are set aside. As the appellant is not pressing for costs, we make no order as to costs. But the deposit of this appeal is to be refunded to the appellant.

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